

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the matter of

Implementation of Section 302 of the  
Telecommunications Act of 1996

Open Video Systems

CS Docket No. 96-46

**OPPOSITION TO PETITION FOR RECONSIDERATION**

The Association of Local Television Stations, Inc. ("ALTV"), hereby opposes in part the Petition of Tele-TV for Reconsideration of the Commission's *Second Report and Order* in the above-captioned proceeding.<sup>1</sup>

ALTV opposes the request for reconsideration of the Commission's determination to permit local television stations to make their must carry/retransmission consent elections with respect to OVS irrespective of their elections for cable systems which serve in whole or in part the area served by the OVS.<sup>2</sup>

File of Commission records  
1996-07-15

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<sup>1</sup>FCC 96-249 (released June 3, 1996) [hereinafter cited as *Second Report and Order*].

<sup>2</sup>Petition of Tele-TV for Reconsideration, CS Docket No. 96-46 (filed July 5, 1996) at 8 *et seq.* [hereinafter cited as "Tele-TV Petition"].

Beyond fretting about stations which might elect must carry on co-located cable systems, but insist on payment by an OVS. Tele-TV faults the Commission for "two critical errors."<sup>3</sup> ALTV submits, however, that the Commission has made a reasonable decision. First, Tele-TV complains that the Commission has assumed that an OVS typically will be large (*i.e.*, large enough to encompass the franchise areas of several -- or even numerous cable systems).<sup>4</sup> It reminds the Commission that the scope of OVS remains unknown.<sup>5</sup> Tele-TV also cites the Commission's statement that "we do not believe that there are sufficient technical and size differences between open video systems and large cable systems to warrant application of significantly different must-carry rules."<sup>6</sup> At the outset, Tele-TV has taken the Commission's statement out of context and expanded its meaning well beyond what the Commission was saying. The Commission was addressing a situation in which an OVS -- much like a "large" cable system -- spanned multiple television markets.<sup>7</sup> It was not comparing OVS and cable systems on a general basis. Tele-TV wrongly has stretched the Commission's statement in a lame attempt to show an inconsistency where none actually exists.<sup>8</sup>

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<sup>3</sup>Tele-TV's fears lack genuine basis. Stations make must carry/retransmission consent elections on the basis of their determinations of their value to the retransmission medium. Those who fear they will not be carried elect must carry; those who believe they can negotiate successfully for compensation from the retransmission medium elect retransmission consent. A station in the latter category is unlikely to forego compensation on one medium just to hold up the other. Similarly, a station which fears denied carriage on one medium is likely to harbor the same concern about the other medium.

<sup>4</sup>Tele-TV Petition at 11.

<sup>5</sup>Tele-TV Petition at 11.

<sup>6</sup>*Second Report and Order* at ¶166.

<sup>7</sup>*Second Report and Order* at ¶166.

<sup>8</sup>ALTV, in fact, has challenged this assumption in light of ALTV's concern that OVS will be quite large and, therefore, not properly comparable to even large cable systems. ALTV Petition for Reconsideration, CS Docket No. 96-46 (filed July 5, 1996).

As to the scope of OVS, the Commission hardly may be considered unreasonable in predicting that OVS "may serve numerous geographic areas that overlap multiple cable franchise areas." The OVS concept and rules are the product of a desire to permit telephone companies to provide video in a minimally regulated status.<sup>9</sup> Most local telephone service is provided by the seven former "baby Bells," each of which serves a vast geographic area. No leap of faith is involved in assuming that they ultimately will operate large technically integrated systems. In the final analysis, Tele-TV can offer nothing less ephemeral than its own self-serving speculation about the scope of OVS. Thus, its argument that the Commission has erred critically in assuming that OVS will be "large" is devoid of merit.

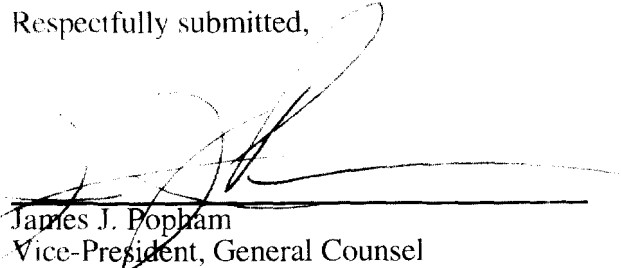
Tele-TV also grasps in futile fashion at the prospect that an OVS may be able to implement different must carry/retransmission consent elections in different areas served by the system. Again, however, Tele-TV must rest its case on speculation. Thus, Tele-TV's argument must await the day when knowledge supplants speculation as the foundation of its argument.

In sum, the Commission has made a reasonable and supportable determination that the size of OVS versus competing cable systems is more likely to be larger. Therefore, its determination to permit stations to make different must carry/retransmission consent elections for OVS *vis-a-vis* co-located cable systems also is well within the boundaries of reasoned and supported agency action.

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<sup>9</sup>*Second Report and Order* at ¶2.

Respectfully submitted,



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July 15, 1996

### **Certificate of Service**

I, James J. Popham, hereby certify that on this fifteenth day of July, 1996, a copy of the foregoing "Opposition to Petition for Reconsideration" were sent via first-class mail, postage pre-paid, to the following:

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